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2007 JUL 30 PM 4:15

RICHARD W. WICKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROOSEVELT JOHNSON,

Petitioner,

v.

BEN CURRY,

Respondent.

No. C 07-2610 MJJ (PR)

**ORDER TO SHOW
CAUSE**

(Docket No. 2)

Petitioner, a California prisoner, filed this pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the decision by the California Board of Prison Terms ("Board") finding petitioner unsuitable for parole.¹ Petitioner has paid the filing fee.

BACKGROUND

In Los Angeles County Superior Court, a jury convicted petitioner of first degree murder. The trial court sentenced him to a term of 26 years to life in state prison. The California Board of Prison Terms (the "Board") found him unsuitable for parole. He challenged this decision unsuccessfully in habeas petitions filed at all three levels of the California courts.

DISCUSSION**A. Standard of Review**

This Court may entertain a petition for writ of habeas corpus "in behalf of a person in

¹The case was originally filed in the Central District of California before being transferred to this court.

1 custody pursuant to the judgment of a State court only on the ground that he is in custody in
2 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a);
3 Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an
4 order directing the respondent to show cause why the writ should not be granted, unless it
5 appears from the application that the applicant or person detained is not entitled thereto." 28
6 U.S.C. § 2243.

7 B. Legal Claims

8 Petitioner claims that (1) the Board's decision to deny parole violated his right to due
9 process because it was not based on at least "some" evidence of unsuitability;² (2) the denial
10 of parole violated his right to due process because it was based on the Governor's blanket
11 policy of denying parole to all individuals convicted of murder. Liberally construed, these
12 claims are cognizable.

13 **CONCLUSION**

14 For the foregoing reasons,

15 1. The Clerk of the Court shall serve by certified mail a copy of this order, and the
16 amended petition and all attachments thereto, upon respondent and respondent's attorney, the
17 Attorney General for the State of California. The Clerk shall also serve a copy of this order
18 on petitioner.

19 2. Respondent shall file with the Court and serve on petitioner, within 90 days of
20 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules
21 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
22 granted based on the cognizable claims described above. Respondent shall file with the
23 answer and serve on petitioner a copy of all portions of the state trial record that have been
24 transcribed previously and that are relevant to a determination of the issues presented by the
25 petition.

26 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
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²This argument is set forth in Claims One and Two in the petition.

1 the Court and serving it on respondent within 30 days of the date the answer is filed.

2 3. Respondent may, within 90 days of the date this order is filed, file a motion to
3 dismiss on procedural grounds in lieu of an answer, as set forth in the Advisory Committee
4 Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a
5 motion, petitioner shall file with the Court and serve on respondent an opposition or
6 statement of non-opposition within 30 days of the filing of the motion, and respondent shall
7 file with the Court and serve on petitioner a reply within 15 days of the date any opposition is
8 filed.


9 4. Petitioner is reminded that all communications with the Court must be served
10 on respondent by mailing a true copy of the document to respondent's counsel.

11 5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
12 Court and respondent informed of any change of address and must comply with the Court's
13 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
14 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

15 6. Upon a showing of good cause, requests for a reasonable extension of time will
16 be granted as long as they are filed on or before the deadline which they seek to extend.

17 IT IS SO ORDERED.

18 DATED: 7/26/2007

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21 MARTIN J. JENKINS
22 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ROOSEVELT JOHNSON,
Plaintiff,

Case Number: CV07-02610 MJJ

CERTIFICATE OF SERVICE

v.

B CURRY et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 30, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Roosevelt Johnson
Correctional Training Facility
Prisoner Id D 63610
P.O. Box 705
Soledad, CA 93960-0705

Office of the Attorney General
455 Golden Gate, Suite 11000
San Francisco, CA 94102-7004



Dated: July 30, 2007

Richard W. Wieking, Clerk
By: Edward Butler, Deputy Clerk